

**Brewers and Maltsters Local Union No. 6, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Anheuser-Busch, Inc. and Bottlers Local Union No. 1187, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 14-CD-688**

30 April 1984

## DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

The charge in this Section 10(k) proceeding was filed 6 September 1983 by the Employer, alleging that the Respondent, Brewers and Maltsters Local Union No. 6, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Brewers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than employees represented by Bottlers Local Union No. 1187, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Bottlers). The hearing was held 6 October 1983 before Hearing Officer John S. Cotter.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

### I. JURISDICTION

The Company, a Missouri corporation, is engaged in the brewing, packaging, and nonretail sale of malt beverages at its facility in St. Louis, Missouri, where it annually purchases goods and supplies valued in excess of \$50,000, which goods and supplies are shipped directly to the Employer's St. Louis, Missouri facility from points located outside the State of Missouri. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Brewers and the Bottlers are labor organizations within the meaning of Section 2(5) of the Act.

### II. THE DISPUTE

#### A. Background and Facts of Dispute

The Employer has remodeled a mezzanine area in building 194, thereby eliminating offices, enlarg-

ing the existing lunchroom, and creating a locker area. Prior to its renovation, the mezzanine area had been cleaned by employees represented by the Bottlers. Subsequent to the renovation, the Employer assigned the cleaning of such area, which included preexisting restrooms, to employees represented by the Brewers, on the basis that the new lunchroom and locker area were created primarily for the use of those employees. Upon completion of the renovation of the mezzanine, the Employer closed another lunchroom, restroom, and locker area in building 182 that formerly was used and cleaned by the employees represented by the Brewers. When it made such assignment, the Employer also assigned to the Brewers-represented employees the cleaning of a contiguous catwalk and three stairwells in the adjoining building 204-A, which had not been clearly assigned to either of the two competing employee groups in the past.

The Bottlers filed a grievance pursuant to articles I and XVIII of its collective-bargaining agreement with the Employer,<sup>1</sup> asserting that the employees it represents are entitled to perform such work. The grievance was set for arbitration 1 December 1983. By letter dated 26 August 1983, Secretary-Treasurer Nicholas J. Torrillo of the Brewers threatened "ultimate economic action" should the arbitration result in a reassignment of the work, and he subsequently confirmed his threat in a telephone conversation with the Employer's manager of industrial relations, Thomas Cipolla, on 2 or 3 September.

#### B. Work in Dispute

The disputed work involves the cleaning of the following areas at the Employer's bottling facility in St. Louis, Missouri: the renovated mezzanine area located in building 194, including the lunchroom, locker room, and restrooms; an interior catwalk connecting the mezzanine with building 204-A; and three stairwells located in building 204-A.<sup>2</sup>

#### C. Contentions of the Parties

The Employer contends that because the lunchroom, restrooms, and locker area in building 182

<sup>1</sup> According to undisputed testimony, the arbitration is not binding on the Brewers. The arbitration award that will result is, therefore, irrelevant to this determination. *Longshoremen ILA Local 1830 (Ryan-Walsh Stevedoring)*, 256 NLRB 608, 611 (1981).

<sup>2</sup> The Employer has assigned the cleaning of the lunchroom to employees represented by the Bottlers on those shifts that employees represented by the Brewers are not present. The work involved in that assignment is not in dispute. Also, significantly, the Bottlers, in its brief to the Board, has disclaimed any interest in the originally disputed work of cleaning the two stairways in building 204-A located farthest from the disputed areas on the mezzanine level of building 194.

formerly used and cleaned by employees represented by the Brewers have been closed, it is merely preserving the work performed by those employees by assigning them to the cleaning of the mezzanine area which was renovated for their use. Thus, it argues that the disputed work should be assigned to the Brewers-represented employees because its past practice has been to assign to these employees the cleaning of any area utilized by them for work or break purposes. With respect to the catwalk and the three stairwells, the Employer further contends that the award of this work should go to the employees represented by the Brewers because these areas are used mainly by these employees and are contiguous to areas in building 204-A where these employees work.

The Brewers repeats the Employer's contentions. In addition, it argues that its certification and collective-bargaining agreement with the Employer favor the award of the disputed work to the employees it represents. It further argues that, because the employees it represents work in areas contiguous to all parts of the disputed work, the factor of economy and efficiency favor the award of the disputed work to these employees.

The Bottlers contends that there exists no reasonable cause to find a violation of Section 8(b)(4)(D) of the Act and that the notice of hearing should be quashed. In support of this contention, the Bottlers argues that the threat of economic action by the Brewers is hollow since its collective-bargaining agreement with the Employer provides for a no-strike clause and the Teamsters' constitution forbids a strike under such circumstances without sanction from the International, under threat of loss of the Local's charter. As to the award of the disputed work, the Bottlers contends that the employees it represents are entitled to the work because they cleaned the mezzanine area before its renovation and because they have traditionally cleaned, as here, break areas which employees represented by more than one union used and for which the employees it represents form the majority of users. It further contends that the Employer is contractually bound by seniority restrictions in assigning employees represented by the Brewers to do the disputed work and that no such restrictions apply with respect to the employees represented by the Bottlers. Finally, it contends that the employees represented by the Brewers have inadequately performed the disputed work in the past and, for that reason, the award should be made to the employees it represents.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As set forth above, the Brewers' secretary-treasurer, Torrillo, threatened the Employer in a letter dated 26 August 1983 with "ultimate economic action" should the pending arbitration result in a reassignment of the work away from the members of the Brewers to whom it was currently assigned, and he later confirmed this statement in a telephone conversation with the Employer's manager of industrial relations, Cipolla. The Bottlers contends, as described above, that the threat is hollow because the Brewers' collective-bargaining agreement with the Employer contains a no-strike clause and because the Teamsters' constitution forbids a strike under threat of loss of the Local's charter. We do not agree. The statement on its face constitutes a threat to strike, and there is no evidence that Torrillo was not serious in making the threat or had in any way colluded with the Employer in this matter. Instead, undisputed testimony shows that Torrillo confirmed the written threat of 26 August 1983 orally to Cipolla immediately upon its receipt by the Employer. Further, Cipolla testified without contradiction that the threat was neither requested nor anticipated and that he regarded it as genuine and serious. That the no-strike clause in the Brewers' contract might result in dire consequences to the Local if it struck is insufficient ground to determine that no threat was made. We can only speculate as to whether the Brewers would be willing to honor the no-strike clause despite its words to the contrary. In these circumstances, we are satisfied that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.<sup>3</sup>

#### *E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case.

<sup>3</sup> See *Cincinnati Mailers Union 17 (Rosenthal & Co.)*, 265 NLRB 1052, 1053 fn. 7 (1982); *Glaziers & Glassworkers Local 767 (Sacramento Metal & Glass Co.)*, 228 NLRB 200 (1977).

*Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

### 1. Certifications and collective-bargaining agreements

The pertinent certifications resulted from the elections directed in *Anheuser-Busch*, 103 NLRB 1205 (1953). Thus, Local 187, stipulated as the predecessor of the Bottlers, was certified to represent, in pertinent part:

All hourly rated production and maintenance employees engaged in production, shipping, storage, receiving and non-craft maintenance operations in bottling department areas. . . .

Further, the Brewers were certified to represent, in pertinent part:

All employees engaged in receiving, shipping and storing raw materials, production supplies, advertising matters and finished products outside of bottling department and bottling department areas, including employees engaged in non-craft maintenance work. . . .

Significantly, both certifications provide for non-craft maintenance work, which describes the nature of the work in dispute. Thus, the certifications do not provide a distinction in function between the two unions as pertains to the work at issue. Further, the certifications do not specify which geographical areas are bottling department areas and which are outside the bottling department areas. Since the areas in dispute include a lunchroom, restrooms, locker area, and three stairwells, and are clearly not work areas, the geographical demarcation of the certifications is basically meaningless as applied to them. Neither does proximity of location clarify the certifications' possible meaning on this issue since the largest part of the area at issue—namely the mezzanine in building 194—is contiguous to work areas where employees represented by both Unions work. Consequently, we find that the certifications are of no significance in the determination of this dispute.

The collective-bargaining agreements reflect the certifications. Thus, article I, section 1 of the Bottlers' agreement with the Employer provides, in pertinent part:

The word "employees" or "employee" as used in this agreement shall mean all hourly rated production and maintenance employees engaged in production, shipping, storage, receiving and non-craft maintenance in bottling department and bottling department areas . . . .

Article 1(b) of the Brewers' agreement recognizes:

[A]ll employees engaged in receiving, shipping, and storing raw materials, productions supplies, advertising matter, and finished products outside of the bottling department and bottling department areas including employees engaged in non-craft maintenance work. . . .

Applying the same rationale as discussed above with respect to the certifications, we find that the collective-bargaining agreements do not favor the assignment of the disputed work to the employees represented by either Union.

### 2. Area and employer practice

No evidence was presented on area practice, and no party contends that this factor is relevant. However, each Union contends that employer practice favors the award of the disputed work to the employees it represents. The Employer contends that its practice favors the award of the work to the employees represented by the Brewers.

An analysis of this factor is aided by reviewing the renovations which gave rise to the current dispute. From 1972 until 1980, the draft beer operations, in which the employees represented by the Brewers work, were located in building 182 and were referred to as the Golden Gate operation. A lunchroom, restrooms, and locker facilities were maintained in this building and were used primarily by employees represented by the Brewers. The lockers were assigned only to those employees, but employees represented by the Bottlers and other unions also used the lunchroom and restrooms. The employees represented by the Brewers were assigned to clean these three areas, as well as the Golden Gate areas in which they worked.

During this period, the area where the work in dispute is now located contained mainly offices for the supervisory and managerial personnel of the packaging and shipping department. There were restrooms and a small lunchroom used predominantly by employees represented by the Bottlers. These employees were assigned the cleaning of those areas at that time. Also prior to the renovations, the catwalk and stairways in dispute were adjacent to areas in which employees represented by the Bottlers worked. The assignment of the cleaning of those areas was mixed. Employees represented by both Unions cleaned them but the employees represented by the Bottlers more frequently cleaned the catwalk, and the employees represented by the Brewers more frequently cleaned the stairway closest to the mezzanine and catwalk.

In 1980 the Employer began substantial renovations of the areas involved. In that year, it complet-

ed the construction of a new draft beer facility, known as the single valve keg facility, in building 204-A. Between 1980 and 1983 the Employer transferred the draft beer production to this new location. As part of this renovation, in July 1983 the Employer completed what are now the disputed lunchroom, restrooms, and locker facility on the mezzanine overlooking building 194 and adjacent to the single valve keg operation in building 204-A. At the same time, the lunchroom, restrooms, and locker facility provided in building 182 primarily for use by the employees represented by the Brewers were closed, and the new facilities have been predominantly used by those employees. Again, the lockers have been assigned exclusively to employees represented by the Brewers. Also, as a result of the transfer of operations, the catwalk connecting buildings 194 and 204-A and the stairways in 204-A in dispute are adjacent to areas in which employees represented by the Brewers now work. It was at the time of the opening of the renovated areas, July 1983, that the Employer made the assignment of the disputed work to the employees represented by the Brewers.

In July 1983, the Employer also completed its construction of a mezzanine overlooking buildings 182 and 174. This mezzanine includes the new location of the managers' and supervisors' offices, formerly located in the area in dispute, and a lunchroom, locker facilities, and restrooms used primarily by employees represented by the Bottlers. The Employer assigned the employees represented by the Bottlers to clean these areas. They were also assigned the cleaning of building 182 where employees represented by the Brewers formerly worked and will be assigned to clean the area in that building formerly cleaned and used by employees represented by the Brewers, as soon as the renovations of this area are completed.

The Company summarizes its practice from 1972 to the present as assigning the cleaning of areas to the employees who primarily use the areas, i.e., areas primarily used by employees represented by the Brewers are cleaned by them, while areas primarily used by employees represented by the Bottlers are cleaned by the latter employees.

The Brewers and the Employer rely on the Employer's summary of its practice to assert that this factor favors an award to employees represented by the Brewers. Similarly, the Brewers and the Employer argue that, because the employees represented by the Brewers have traditionally cleaned the areas adjacent to their workplaces, employer practice favors the assignment of the disputed catwalk and stairways to these employees as well.

On the other hand, the Bottlers argues that because the employees it represents cleaned the area in dispute prior to the renovations they should continue to be assigned the work after the renovation. It also contends that employer practice favors this award because it has traditionally cleaned the lunchrooms which employees from more than one union use<sup>4</sup> and, most significantly, where employees represented by it were the predominant users. In its brief to the Board, the Bottlers have disclaimed, however, any interest in having the cleaning of the two stairways farthest from the mezzanine connecting buildings 194 and 204-A assigned to employees it represents, and admits that the past practice concerning these stairways was mixed.

We have reviewed the above evidence and conclude that past practice strongly supports awarding the disputed work to the employees represented by the Brewers. Although employees represented by the Bottlers formerly cleaned the mezzanine area now in dispute, this was before the renovations which substantially converted the purpose of that location, and they have not cleaned the area since it was closed for renovations.

The record also does not substantiate the Bottlers' claim that the employees it represents have traditionally cleaned all lunchrooms where employees represented by more than one union eat. The Bottlers admits that the employees represented by the Brewers have traditionally cleaned the lunchroom and related facilities provided primarily for their use. Neither does the record substantiate the Bottlers' claim that the majority of the employees who use the lunchroom are represented by it. The plant manager of beer packaging and shipping, Jack Russell, testified that, according to his observations and those of other supervisors, the majority of the employees who use the lunchroom are represented by the Brewers. The Bottlers' evidence that a majority of the 26 to 32 employees it represents who work near the disputed areas per shift use the lunchroom does not contradict Russell's testimony, particularly in light of the evidence that 61 employees represented by the Brewers work in areas contiguous to the disputed areas and apparently all use the disputed facilities.

We therefore conclude that the factor of employer practice strongly favors the award of the disputed work to the employees represented by the Brewers.

<sup>4</sup> The Bottlers admits that the lunchroom in building 182 was an exception to this.

### 3. Relative skills

It is uncontroverted that the work in dispute involves only routine janitorial work. The specific tasks involved include sweeping, emptying trash, removing debris, cleaning tables, mopping floors, and washing toilets, urinals, and wash basins. The Bottlers introduced two grievances filed by its members concerning the cleanliness of the restrooms included in the disputed work. However, Plant Manager Russell testified without contradiction that the supervisors were not dissatisfied with the cleaning and that any occasional lapse in meeting standards had not been related to a lack of skills by the employees involved. The factor of relative skills, accordingly, does not favor the award of the disputed work to the employees represented by either Union.

### 4. Economy and efficiency of operation

The Bottlers contends that it is more economical and efficient for the employees it represents to perform the disputed work because bottlers are present on some shifts that brewers are not. Although employees represented by both Unions work near the disputed work generally for three shifts per day during the workweek, on weekends bottlers may work all three shifts while brewers may only work one or two. The Employer recognized this and assigned the employees represented by the Bottlers to clean the lunchroom on those shifts on which no employees represented by the Brewers are present. However, according to undisputed testimony, it is unnecessary to clean the other areas in dispute on each shift, and these areas have been assigned exclusively to employees represented by the Brewers.

The Bottlers argues that a seniority clause in the Brewers' collective-bargaining agreement with the Employer limits the Employer's flexibility in assigning Brewers-represented employees to the disputed work and that the assignment of the disputed work to these employees is, therefore, less economical. However, the Bottlers has failed to substantiate that the Employer has experienced any such difficulty, and we, accordingly, find no merit to this contention.

The Brewers, on the other hand, contends that because the lunchroom, restrooms, and locker area are adjacent to areas where the employees it represents work, the Employer could more efficiently assign these employees to clean these areas. However, as noted above, the employees represented by the Bottlers also work in nearby areas.

Finally, the Employer contends, as does the Brewers, that because the employees represented by the Brewers are the main users of and exclusive

workers in the areas contiguous to the catwalk and stairways, it is more efficient to assign these employees the cleaning of the catwalk and stairways. It is undisputed that these areas are used almost exclusively by these employees and that they, similarly, almost exclusively work in and clean the contiguous work areas in the single valve keg facility. On this basis, we agree with the Employer and the Brewers that the factor of economy and efficiency favors the award of this portion of the disputed work to the employees represented by the Brewers.

In sum, we conclude that the factor of economy and efficiency does not favor the assignment of the cleaning of the disputed lunchroom, restrooms, and locker facility to the employees represented by either Union, but that it does favor the assignment of the cleaning of the disputed catwalk and stairways to the employees represented by the Brewers.

### 5. Employer assignment and preference

As stated above, in July 1983 the Employer assigned the disputed work to Brewers-represented employees because the lunchroom had been provided mainly for and is used predominantly by these employees, and because they had been assigned to clean the lunchroom that had been replaced by this lunchroom. The same rationale applied to the assignment of the cleaning of the restrooms and the locker area, which significantly only contains lockers for employees represented by the Brewers. As for the catwalk and stairwells, the Employer assigned their cleaning also to those employees who used them the most, namely, the employees represented by the Brewers. The Employer prefers that the disputed work continue to be performed by these employees. Accordingly, this factor favors an award of the disputed work to employees represented by the Brewers.

### 6. Job displacement

The Brewers argues that if the disputed work is assigned to bottlers this will result in the layoff of at least one and possibly as many as three of the employees it represents. The Employer concurs in this contention. Plant Manager Russell testified that the current assignment has caused no layoffs, but that if the award is made to bottlers at least one employee represented by the Brewers will be laid off. He further testified that during each shift there is an employee who spends some time cleaning the lunchroom and that "[i]t is possible" that the Brewers could lose one employee it represents each shift.

The Board has traditionally given weight to the factor of job displacement in its determination of

disputed work.<sup>5</sup> On the basis of the foregoing, we conclude that the factor of job displacement strongly favors the award of the disputed work to the employees represented by the Brewers.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by the Brewers are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's past practice, the economy and efficiency of operation as pertains to the cleaning of the disputed catwalk and stairways, the Employer's assignment and preference, and the job displacement that would otherwise occur. In making this determination, we are awarding the work to employees represented

by the Brewers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Anheuser-Busch, Inc., represented by Brewers and Maltsters Local Union No. 6, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are entitled to perform the cleaning of the following areas at the Employer's bottling facility in St. Louis, Missouri: the renovated mezzanine area is located in building 194, including the lunchroom, restrooms, locker area; an interior catwalk connecting the mezzanine with building 204-A; and three stairwells located in building 204-A.

<sup>5</sup> See *Laborers Local 264 (Arrowhead Building Materials)*, 253 NLRB 288, 292 (1980).